

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF FEBRUARY 14 AND 15, 2007
SOUTH LAKE TAHOE, CALIFORNIA**

ITEM: 3

**SUBJECT: PUBLIC HEARING – PROPOSED RENEWAL OF WAIVER OF
WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES
RELATED TO TIMBER HARVEST AND VEGETATION
MANAGEMENT ACTIVITIES**

CHRONOLOGY: 1999 - *Plan for California's Nonpoint Source Pollution Control Program* (NPS Program Plan) (SWRCB, 1999) required the Regional Boards to regulate activities that could impact waters of the state, such as timber harvest.

May 1999 - SB 390 Amended Section 13269 of the California Water Code (CWC) to require all waivers of waste discharge requirements adopted previously by the Water Board be renewed at a public hearing and that they shall be adopted for a term not to exceed five years.

January 2003 – Water Board certified CEQA Negative Declaration and adopted a new Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities.

May 2004 - *Policy For Implementation And Enforcement Of The Nonpoint Source Pollution Control Program*. Policy developed to comply with 1999 changes to CWC Section 13269, to serve as guidance for implementing and enforcing the NPS program.

2004 – Section 13269 of California Water Code (CWC) amended to include a monitoring requirement for all waivers.

ISSUES: Should the Water Board adopt the proposed Resolution Renewing the Timber Waiver to require monitoring and to cover non-commercial projects?

Should hand thinning work in stream zones and on steep slopes be included in Category 1 of the Timber Waiver?

Should we rely on the US Forest Service's Best Management Practices Evaluation Program (BMPEP) to meet its monitoring requirements?

DISCUSSION: Background

The Water Board will decide whether to renew the Conditional Waiver of Waste Discharge Requirements for Timber Harvest Activities (Timber Waiver) that was adopted in January 2003. Although the current Timber Waiver will not expire until 2008, there are two reasons staff is proposing renewing the waiver now. The first is to comply with CWC section 13269 by requiring monitoring. Second, there has been a significant increase in the number of non-commercial fuels hazard reduction activities in forested communities. There is a need to provide a streamlined permitting option for these projects, while still maintaining water quality protection. The current waiver only includes commercial activities regulated by the California Department of Fire Protection (CDF), and US Forest Service projects. Staff is proposing the Timber Waiver be renewed to include non-commercial activities so dischargers do not have to seek individual waste discharge requirements for projects posing minimal environmental threat under the conditions of a waiver. Fuels hazard reduction involves similar types of activities and impacts as commercial timber harvest activities and can be integrated in to the existing waiver.

The proposed waiver policy, if adopted, would waive the requirement to submit reports of waste discharge, and to obtain waste discharge requirements, for timber harvest activities that meet specified eligibility criteria and that follow specified conditions.

The proposed waiver policy contains six categories of waivers that would apply to timber harvest activities on both nonfederal and federal lands, including a separate category for lands managed by the US Forest Service. Defensible space projects up to 150-feet from existing structures are covered under the waiver, but do not require a project submittal. A new category 6 was added for post-fire emergency remediation activities. Monitoring is required for Category 2-5 projects to meet CWC 13269 requirements. The waiver also requires category 1 projects involving hand thinning in stream zones or on steep slopes to submit final certification that operations were conducted in accordance with waiver conditions.

Public Outreach and Coordination

Water Board staff has worked collaboratively with staff from other Water Boards to develop a consistent timber waiver policy. The proposed monitoring requirements are similar to monitoring requirements adopted by the Central Valley Water Board in 2006.

A draft Renewed Timber Waiver was sent to a broad public mailing list in November 2006. A Response to Comments document was developed and included in a second mailing to the public in January, along with a revised Renewed Timber Waiver.

Water Board staff met with environmental interests, industry, local fire districts/firesafe councils, US Forest Service, California Department of Forestry and Fire Protection (CDF), and other agencies.

The most prevalent issue among most stakeholders was how the monitoring requirements should be imposed. Environmental interests requested the monitoring element be made more stringent by including in-stream and hill slope/soil monitoring. Most were generally supportive of the concept of adding noncommercial fuels hazard reduction to the waiver, but wanted assurance that these projects will be done in a manner that protects water quality. Alternately, local Fire Districts have taken on significantly more responsibility for fuels hazard reduction and forest fire prevention activities within communities and prefer less monitoring and reporting. Many of these agencies receive public funding (including Proposition 40 grant funding through the Water Board and CDF) to conduct this work and are trying to balance the need to reduce fire threat with meeting water quality regulations. Other land management agencies are also responsible for this type of work. A key question was how to regulate hand-thinning activities in sensitive areas so that we would not discourage this method of fuels reduction, and still protect water quality. Hand-thinning generally is very low impact if done under the proper conditions and is the primary method of vegetation removal in SEZs within the Lake Tahoe Basin.

Staff has proposed including vegetation removal by hand in SEZs, water and lake protection zones (WLPZs), and on steep slopes in Category 1. Specific conditions have been applied to this category to prevent potential impacts. There is also a requirement for a post-project certification to verify that the project was inspected, and all necessary measures were implemented to avoid negative impacts

to water quality. The benefit for dischargers for category 1 projects is that they can avoid waiting 30 days for work to commence, and have less stringent monitoring requirements than other waiver categories. Note that the waiver clearly states that the Executive Officer may impose individual monitoring requirements at any time if a project poses a threat to water quality. Projects proposing the use of mechanized equipment in or near SEZs, or that are part of larger scale efforts analyzed in higher level CEQA documents by other agencies will not qualify for category 1. This category is intended for very low impact projects that will have minimal potential for adverse water quality impacts.

The US Forest Service has requested the use of its Best Management Practices Evaluation Program (BMPEP) to fulfill the monitoring requirement for the waiver. Although the program is a valuable assessment tool on a state-wide basis for measuring implementation rates and effectiveness of best management practices on all US Forest Service projects, several of the Water Boards have expressed concern over the adequacy of this program to evaluate water quality protection. There are also some forests that do not implement the program annually, and one forest in our region, the Humboldt-Toiyabe National Forest, does not participate at all. The results of the last BMPEP also showed mixed results for BMP implementation and effectiveness. Staff supports the program and encourages the US Forest Service to make improvements to address our concerns. The existing program with some modifications can be used to partially fulfill the monitoring requirement in the proposed waiver. Staff is proposing additional monitoring be required in watersheds where Cumulative Watershed Effects analyses exceed water quality thresholds, where past BMPEP results show poor BMP implementation/effectiveness, and in watersheds that are threatened or impaired under section 303(d) of the Clean Water Act. Furthermore, in order to recognize the existing efforts of the US Forest Service, the Timber Waiver provides for coordination with the US Forest Service so information and procedures from their existing monitoring efforts can be relied upon where possible. As improvements to the BMPEP are made, the Executive Officer may modify monitoring requirements at any time, without waiting for the next Timber Waiver renewal.

Staff has made other minor revisions in response to additional comments to clarify our requirements. Under separate cover, staff anticipates sending the Board any additional comments received after January 30 from interested persons on this proposed waiver.

RECOMMENDATION:

Adoption of the Resolution as proposed.

Enclosures:

1. Proposed Resolution, Renewed Timber Waiver, and Monitoring and Reporting Program
2. Response to Comments Document, amended January 30, 2007
3. Public Comments